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In The

Supreme Court of the United States

DOUGLAS SPECTOR, ET AL.,
Petitioners,

v.

NORWEGIAN CRUISE LINE LTD.,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICI CURIAE*
PARALYZED VETERANS OF AMERICA,
AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES,
THE COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC.,
EPILEPSY FOUNDATION, UNITED SPINAL ASSOCIATION,
UNITED CEREBRAL PALSY, THE ARC OF THE UNITED STATES,
AMERICAN COUNCIL OF THE BLIND, NATIONAL MULTIPLE
SCLEROSIS SOCIETY, AND THE TRAINING AND ADVOCACY
SUPPORT CENTER OF THE NATIONAL ASSOCIATION OF
PROTECTION AND ADVOCACY SYSTEMS, INC.,
IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

INTEREST OF *AMICI* 1

SUMMARY OF ARGUMENT 5

ARGUMENT

I. EXEMPTING CRUISE SHIPS FROM TITLE III OF THE ADA WOULD SUBVERT CONGRESS' GOAL OF FULL PARTICIPATION IN SOCIETY BY PEOPLE WITH DISABILITIES 7

A. The Plain Text of the ADA and Its Legislative History Evidence Congress' Goal of "Full Participation" 7

B. Given the Popular Appeal of Cruise Ships, "Full Participation" Must Include Equality of Access on Board 9

II. THE CRUISE SHIP INDUSTRY'S COMPLIANCE WITH TITLE III IS FEASIBLE AND WOULD NOT BE UNDULY ONEROUS GIVEN THE APPEAL OF CRUISES TO PERSONS WITH DISABILITIES. 13

A. The Final Report of the Passenger Vessel Access Advisory Committee Provides Workable Standards for the Cruise Ship Industry's Compliance with Title III 13

B. An Accessible Cruise Is an Ideal Vacation Option for Persons with Disabilities, and Many Cruise Lines Actively Market to Persons with Disabilities 17

CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Access Now, Inc. v. Cunard Line Ltd., No. 00-7233-Civ (S.D. Fla. Apr. 18, 2001) 16

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) 12

Spector v. Norwegian Cruise Line Ltd., 356 F.3d 641 (5th Cir. 2004) 12

Stevens v. Premier Cruises, Inc., 215 F.3d 1237 (11th Cir. 2000) 11, 12

United States v. Gonzales, 520 U.S. 1 (1997) 7

Statutes

42 U.S.C. § 12101 ..... 1, 7

42 U.S.C. § 12182 7

42 U.S.C. § 12181 ..... 8, 11

42 U.S.C. § 12186 13

42 U.S.C. § 12204 13

Federal Register

56 Fed. Reg. 35408 15

69 Fed. Reg. 44084 15

69 Fed. Reg. 69244 15

Legislative History

H.R. Rep. No. 101-485(I) (1990) 7

H.R. Rep. No. 101-485(III) (1990) 7, 8

S. Rep. No. 101-116 (1989) 9

136 Cong. Rec. S9684 (July 13, 1990) 9

Other Federal Materials

Architectural and Transportation Barriers Compliance Board, Board Releases Information for Guidelines for Passenger Vessels (Nov. 26, 2004), *available at* http://www.access-board.gov/news/pvag.htm (last visited Nov. 29, 2004) 15

Architectural and Transportation Barriers Compliance Board, ADAAG Review Advisory Committee's Recommendations, *available at* http://www.access-board.gov/ada-aba/commrept.htm (last visited Nov. 29, 2004) 15

Architectural and Transportation Barriers Compliance Board, Passenger Vessel Access Advisory Committee, Passenger Vessel Access Advisory Committee Members, *available at* http://www.access-board.gov/pvaac/CommList.htm (last visited Nov. 29, 2004) 14

Architectural and Transportation Barriers Compliance Board, Passenger Vessel Access Advisory Committee, Recommendations for Accessibility Guidelines for Passenger Vessels: Final Report, *available at* http://www.access-board.gov/pvaac/commrept/index.htm (last visited Nov. 29, 2004) 14

Architectural and Transportation Barriers Compliance Board, Passenger Vessel Access Advisory Committee, Summary of the Report from the Passenger Vessel Access Advisory Committee, *available at* http://www.access-board.gov/pvaac/commrept/report-summary.htm (last visited Nov. 29, 2004) 14

Other Authorities

Deborah Alexander, *Vacationing with Disabilities: New Travel Market Is Opening Up on the Road*, OMAHA WORLD-HERALD, May 23, 2003, at 1D 17, 19

James Barron, *A Queen Arrives, and Even in Jaded New York, Jaws Drop*, N.Y. TIMES, Apr. 23, 2004, at B2 9

Robert L. Burgdorf Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413 (1991) 8

Carnival Cruise Lines, Is There a Doctor on Board?, *available at* http://www.carnival.com/CMS/FAQs/Medical_Services.aspx (last visited Nov. 29, 2004) 18

Ruth Colker, *ADA Title III: A Fragile Compromise*, 21 BERKELEY J. EMP. & LAB. L. 377 (2001) 8

Crystal Cruises, Shipboard Life: Medical Services, *available at* http://www.crystalcruises.com/onboard.aspx?ID=9#id36 (last visited Nov. 29, 2004) 18

Curtis D. Edmonds, *Won't You Let Me Take You on a Sea Cruise: The Americans With Disabilities Act and Cruise Ships*, 28 TUL. MAR. L.J. 271 (2004) 20

Frederick Emmons, AMERICAN PASSENGER SHIPS: THE OCEAN LINES AND LINERS, 1873-1983 (1985, Univ. of Del. Press) 9

Karin Esterhammer, *Sailing on Four Wheels: A Short Voyage to Mexico Proves to Be Easy Going for a Wheelchair-Bound Vacationer*, L.A. TIMES, Feb. 6, 2000, at L5 18

Good Morning America (ABC television broadcast, Nov. 18, 2004) 10

Melissa Grace, et al., *Bow to the Queen: New Yorkers Stand at Attention as* QM2 *Ends 1st Voyage Here*, N.Y. DAILY NEWS, Apr. 23, 2004, at 2 9

A League of Their Own, EXCEPTIONAL PARENT, Vol. 34, No. 5, May 1, 2004, at 42 17

Louis Harris & Assocs., *The ICD Survey of Disabled Americans: Bringing Disabled Americans Into the Mainstream* (1986) 8

Tricia Holly, *Able Bodies, Open Minds: Learning to Serve the Disabled Travel Market Is Daunting but Well Worth the Effort of Travel Agents*, TRAVEL AGENT Vol. 311, No. 2, Jan. 13, 2003, at 20 .....17, 19

Ann Hubbard, *Meaningful Lives and Major Life Activities*, 55 ALA. L. REV. 997 (2004) 11

International Council of Cruise Lines, *The Cruise Industry: 2003 Economic Summary*, *available at* http://www.iccl.org/resources/2003_econstudy-analysis.pdf (last visited Nov. 29, 2004) 12

International Council of Cruise Lines, *The Cruise Industry: 2002 Economic Summary*, *available at* http://www.iccl.org/resources/2002EconomicStudySummary.pdf (last visited Nov. 29, 2004) 11

International Council of Cruise Lines, *Cruise Industry FAQs*, *available at* http://www.iccl.org/faq/cruising.cfm (last visited Nov. 29, 2004) 10, 11

THE LOVE BOAT (1977-1986, ABC Television) 9

Dian McDougall, *Ships Meet Special Needs*, TORONTO SUN, Dec. 1, 2002, at T3 19

Norwegian Cruise Line, Press Release, Norwegian Cruise Line Gives Away 125 Surprise 'Second Honeymoons' at Reaffirmation Ceremony on Good Morning America (Nov. 18, 2004) 10

Martha C. Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 POL. THEORY 202 (1992) 11

Princess Cruise Lines, Accessibility for Passengers with Disabilities, *available at* http://www.princess.com/about/policy.jsp?policyId=na405 (last visited Nov. 29, 2004) 16

Princess Cruise Lines, Shipboard Medical Program, *available at* http://www.princess.com/about/policy.jsp?policyId=na397 (last visited Nov. 29, 2004) 18

Lee Romney, *Cruise Lines, Disabled Spar Over Accessibility*, L.A. TIMES, Sept. 28, 2004, at B1 20

Royal Caribbean International, Accessibility Onboard, *available at* http://www.royalcaribbean.com/allaboutcruising/accessibleseas/home.do (last visited Nov. 29, 2004).....16

Society for Accessible Travel and Hospitality, Press Release, Royal Caribbean International Supports SATH (July 27, 2004), *available at* http://www.sath.org/index.html?section=Press Releases&id=4259 (last visited Nov. 29, 2004) 16

Victoria Stevens, *Royal Treatment: Royal Caribbean Line Launches Its Newest Luxury Ship, the* Mariner of the Seas, TORONTO STAR, Nov. 27, 2003, at H01 19

Tom Stieghorst, et al., *A Queen of Our Own: Cheering Crowds, Streams of Confetti, and Powerful Horn Blasts Greet the* Queen Mary 2, SUN-SENTINEL (Ft. Lauderdale, Fla.), Jan. 27, 2004, at 1A 10

TITANIC (Paramount Studios, 1997) 9

Today (NBC television broadcast, Apr. 22, 2004) 10

Kurt Ulrich, MONARCHS OF THE SEA (1999, St. Martin's Press).....9

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976).....7

INTRODUCTION

Paralyzed Veterans of America ("PVA"), American Association of People with Disabilities ("AAPD"), The Council of Parent Attorneys and Advocates, Inc. ("COPAA"), Epilepsy Foundation, United Spinal Association, United Cerebral Palsy ("UCP"), The Arc of the United States ("The Arc"), American Council of the Blind ("ACB"), National Multiple Sclerosis Society, and The Training and Advocacy Support Center of the National Association of Protection and Advocacy Systems, Inc. ("TASC/NAPAS") respectfully submit this *amici curiae* brief in support of petitioners.[1]

INTEREST OF *AMICI*

Founded in 1946, the Paralyzed Veterans of America is a congressionally chartered veterans service organization with over 20,000 members, all of whom are veterans of the armed forces with spinal cord injury or dysfunction. PVA has developed a unique expertise on a wide variety of issues involving the special needs of its membership and uses that expertise to be the leading advocate for civil rights and opportunities which maximize the independence of PVA members. Virtually all PVA members use wheelchairs for mobility and have a significant interest in the broadest possible implementation and enforcement of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq*. PVA's Advocacy and Architecture Programs advocate for full access to the built environment, including marine vessels of all types. PVA frequently receives complaints from its members and

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[1] The parties in this case have consented to the filing of this brief. Their letters are on file with the Clerk of this Court. Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party has authored this brief in whole or in part, and no person or entity other than *amici* and their counsel contributed monetarily to the preparation or submission of this brief.

others who suffer discrimination because they cannot gain access to cruise ships or because they do not have access to the full range of services and amenities available to others onboard.

The American Association of People with Disabilities has over 100,000 members and is the largest national non-profit cross-disability member organization in the United States. Dedicated to ensuring economic self-sufficiency and political empowerment for the more than 56 million children and adults with disabilities in the U.S., the AAPD works in coalition with other disability organizations for the full implementation and enforcement of disability nondiscrimination laws. It was founded in 1995 to help unite the diverse community of people with disabilities, including their families, friends, and supporters, and to be a national voice for change in implementing the goals of the ADA. AAPD's interest in this case arises from the organization's stated goal of furthering the productivity, independence, full citizenship, and total integration of people with disabilities into all aspects of society and the natural environment.

The Council of Parent Attorneys and Advocates, Inc. is a national nonprofit organization of attorneys, advocates and parents established to improve the quality and quantity of legal assistance for parents of children with disabilities. COPAA represents the interests of all students with disabilities. COPAA's interest in this case is two-fold: to ensure that laws vindicating the rights of persons with disabilities, including the ADA, are fully enforced; and to enhance the recreational, leisure, and community opportunities for children with disabilities as these activities in general benefit the broad educational experiences of children with disabilities.

The Epilepsy Foundation is a nonprofit corporation founded in 1968 to advance the interests of 2.5 million Americans with epilepsy and seizure disorders. With its affiliates throughout the nation, the Epilepsy Foundation maintains and disseminates information about epilepsy and seizures; promotes public understanding of the disorder; and supports research, professional awareness and advocacy on behalf of people with seizure disorders. Because the term "epilepsy" evokes stereotyped images and fears in others that affect persons with this medical condition in all aspects of life, the Epilepsy Foundation has, since its inception, worked to dispel the stigma associated with seizures, and has supported the development of laws, including the ADA, that protect individuals from discrimination based on these stereotypes and fears.

The United Spinal Association is a membership organization of persons with spinal cord dysfunction, injury, or disease, many of whom are persons with disabilities as defined by the ADA. The United Spinal Association furthers its members' interests by assuring quality healthcare, promoting research, advocating for civil rights and independence, and educating the public about these issues and enlisting their help to achieve these fundamental goals. The United Spinal Association has expanded its original mission of advocacy as a veterans organization and now provides its expertise to all individuals with a spinal cord injury or disease, regardless of their age, gender, or veteran status. The United Spinal Association has direct experience with travel services available to individuals with mobility impairments. In particular, the United Spinal Association advocates on behalf of travelers with disabilities who have confronted barriers during their trips and is just beginning to offer travel services to its members.

For more than 55 years, United Cerebral Palsy has been committed to change and progress for persons with disabilities. The national organization and its nationwide network of 99 affiliates in 36 states, and the District of Columbia, strive to ensure the inclusion of persons with disabilities in every facet of society — from the Web to the workplace, from the classroom to the community. As one of the largest health charities in America, UCP seeks to advance the inde-

pendence, productivity, and full citizenship of people with disabilities through an affiliate network.

The Arc of the United States, through its approximately 900 state and local chapters, is the largest national voluntary organization in the United States devoted solely to the welfare of the more than seven million children and adults with mental retardation and related developmental disabilities and their families. Since its inception, The Arc has vigorously challenged attitudes and public policy, based on false stereotypes, that have authorized or encouraged segregation of people with mental retardation and related disabilities in virtually all areas of life. The Arc was one of the leaders in framing and supporting passage of the ADA. The Arc is now actively involved in the law's implementation and enforcement.

The American Council of the Blind is a national nonprofit, consumer organization of the blind, with seventy affiliates and members in all fifty states. ACB strives to increase the quality of life for all people who are blind and visually impaired by working to increase their independence, security, and equality of opportunity. ACB members were very involved in the efforts that led to the passage of the ADA, and ACB believes that exempting cruise ships from Title III of the ADA would undermine the basic principles of access and accommodation for people with disabilities that lie at the heart of the ADA. Exempting cruise ships from the requirements of Title III would adversely affect ACB's membership by limiting the transportation and travel opportunities of an entire segment of the population.

The National Multiple Sclerosis Society is a nonprofit organization serving people with multiple sclerosis ("MS") in every state. Founded in 1946, the Society supports more MS research and serves more people with MS than any national voluntary MS organization in the world. Through a nationwide network of chapters, the National MS Society supports research efforts, educates, provides a variety of empowering

programs, organizes fund-raising events, and advocates for people with disabilities.

The Training and Advocacy Support Center of the National Association of Protection and Advocacy Systems provides training and technical assistance to the nationwide network of protection and advocacy ("P&A") agencies. Located in all 50 states, the District of Columbia, Puerto Rico, and the federal territories, P&As are mandated under various federal statutes to provide legal representation and related advocacy services on behalf of all persons with disabilities in a variety of settings. The P&A system comprises the nation's largest provider of legally based advocacy services for persons with disabilities. This case is of particular interest to TASC/ NAPAS because P&As frequently represent people with disabilities in ADA Title III cases.

SUMMARY OF ARGUMENT

When Congress passed the ADA, it deliberately crafted the Act's public accommodations provisions to reach broadly and to cover entities like cruise ships. Congress did not only seek in Title III to guarantee persons with disabilities access to the bare necessities of life like grocery stores and hospitals; rather, Congress decided to include within the Act's scope cultural outlets that make life more fulfilling, such as theaters, museums, health spas, and amusement parks. Representations of cruise ships in literature, movies, television, and other media demonstrate the cultural significance of cruise ships and the ways in which vacations on them epitomize the best of what life has to offer. Therefore, permitting cruise lines to avoid the public accommodations provisions of the ADA would subvert Congress' stated goal of permitting people with disabilities to participate fully in society.

In addition, for many people with disabilities, taking a cruise is an ideal vacation option because cruise ships offer, in a relatively small space, an incredible array of leisure ac-

tivities. Cruise ships generally contain restaurants, bars, movie theaters, shopping outlets, casinos, sunbathing decks, swimming pools, live music and theater, educational programs, health spas, and gymnasiums. Thus, a traveler with a disability, who may have limited mobility, need not leave the ship to enjoy a host of entertainment options. She need only unpack once over the course of her vacation. If she requires rest in the middle of the day, she can return to her cabin at any time. And if the need arises, she can avail herself of onboard medical services. Research has found that people with disabilities are fifty percent more likely to have taken a cruise in the past five years than the population at large.

As a result, many cruise lines actively target persons with disabilities in their marketing materials and promotional activities. When the federal agency charged by statute with creating ADA accessibility standards convened an advisory committee to propose accessibility standards for cruise ships, representatives from the cruise line industry served as committee members and were actively involved in drafting recommendations for proposed regulations addressing accessibility on newly constructed and altered passenger vessels and cruise ships. Several cruise lines have already voluntarily implemented many of these recommendations. As a result, any concern about the feasibility of industry compliance is misplaced. Accommodating people with disabilities on cruise ships is not simply viable, but, as experience has shown, can be advantageous for the industry. This Court should therefore reverse the judgment of the Fifth Circuit.

ARGUMENT

I. EXEMPTING CRUISE SHIPS FROM TITLE III OF THE ADA WOULD SUBVERT CONGRESS' GOAL OF FULL PARTICIPATION IN SOCIETY BY PEOPLE WITH DISABILITIES.

A. The Plain Text of the ADA and Its Legislative History Evidence Congress' Goal of "Full Participation."

When it passed the ADA in 1990, Congress recognized "the continuing existence of unfair and unnecessary discrimination" against people with disabilities. 42 U.S.C. § 12101(a)(9). Congress sought to remedy this invidious discrimination through the public accommodations provisions of Title III, which were designed to assure "full participation" by people with disabilities in all aspects of American society. *Id.* § 12101(a)(8).

That sentiment is clearly embraced by the text of the Act itself: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of *any* place of public accommodation by *any* person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a) (emphasis added). "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976)). As the House Committee on Public Works and Transportation noted in its final report, "[t]he [ADA] will permit the United States to take a long-delayed but very necessary step to welcome individuals with disabilities *fully* into the mainstream of American society." H.R. Rep. No. 101-485(I) (1990), at 24 (emphasis added); *see also* H.R. Rep. No. 101-485(III), at 22 ("The purpose of the [ADA] is to provide a clear and comprehensive national mandate to end discrimi-

nation against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life.").

To achieve this goal of full participation, Congress made the public accommodations provisions of the ADA broad in scope; the sweep of ADA coverage reaches more entities and services than any of Congress' earlier civil rights statutes.[2] Notably, the Act does not limit its coverage to only those businesses and services that a person with a disability would need in order to meet the day-to-day requirements of contemporary life. Rather, the provisions cover almost all aspects of public life and human interactivity. In addition to requiring accessibility for more basic needs (e.g., grocery stores and hospitals), Title III expressly includes concert halls, galleries, museums, health spas, amusement parks, or any "other place of recreation" in order to ensure that people with disabilities have access to cultural outlets that make life joyous, not just possible. *See* 42 U.S.C. § 12181(7). That Congress opted to explicitly include these signifiers of a fully-lived life is unsurprising in light of its finding that "persons with disabilities . . . have less social and community life, participate much less often in social activities that other Americans regularly enjoy, and express less satisfaction with life." H.R. Rep. No. 101-485(III), at 25 (citing Louis Harris & Assocs., *The ICD Survey of Disabled Americans: Bringing Disabled Americans Into the Mainstream* (1986)). Thus, in

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[2] *See* Ruth Colker, *ADA Title III: A Fragile Compromise*, 21 BERKELEY J. EMP. & LAB. L. 377, 385-87 (2001) (comparing scope of Title III to the narrower public accommodations provisions of the Civil Rights Act of 1964); Robert L. Burgdorf Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413, 470-73, 493-501 (1991) (noting that Title III covers, "with a few exceptions such as the sale or rental of housing, almost every facet of American life in which a business establishment or other entity serves or comes into contact with members of the general public").

passing the ADA, Congress sought to help people with disabilities realize one of their greatest dreams — to live an unconstrained life that includes everything society has to offer.[3]

B. Given the Popular Appeal of Cruise Ships, "Full Participation" Must Include Equality of Access on Board

Cruise ships have long held a special place in the American cultural psyche, and their rich history has been well documented and fictionalized in print, film, and television. *See, e.g.*, Kurt Ulrich, MONARCHS OF THE SEA (1999, St. Martin's Press); TITANIC (Paramount Studios, 1997); Frederick Emmons, AMERICAN PASSENGER SHIPS: THE OCEAN LINES AND LINERS, 1873-1983 (1985, Univ. of Del. Press); THE LOVE BOAT (1977-1986, ABC Television). As the recent media coverage of the maiden voyage of the *Queen Mary 2* attests, cruise ships continue to operate as a cultural signifier of the good life. *See* Melissa Grace, et al., *Bow to the Queen: New Yorkers Stand at Attention as* QM2 *Ends 1st Voyage Here*, N.Y. DAILY NEWS, Apr. 23, 2004, at 2; James Barron, *A Queen Arrives, and Even in Jaded New York, Jaws Drop*,

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[3] As testimony before Congress repeatedly emphasized, attainment of the "American dream" for people with disabilities was a primary goal of the ADA. *See, e.g.*, S. Rep. No. 101-116, at 20 (1989) (citing testimony that the ADA would permit people with disabilities to "have the same aspirations and dreams as other American citizens" and "know that their dreams can be fulfilled," and that America is true to its ideal of equality, which is "the full measure of the American dream"); *id.* at 96 (additional views of Sen. Hatch) ("Persons with disabilities, no less than other Americans, are entitled to an equal opportunity to participate in the American dream. It is time for that dream to become a reality."); 136 Cong. Rec. S9684 (July 13, 1990) (statement of Sen. McCain) ("Mr. President, this bill is an important step in making the American dream available to all . . . . The freedom to pursue the American dream is at the heart of what makes our Nation great.").

N.Y. TIMES, Apr. 23, 2004, at B2. The media covered the *QM2*'s arrival live on national television, and the ship was welcomed in the U.S. with fireworks, water jet displays, a U.S. Navy destroyer escort, visits by dignitaries, ballet and symphony performances, charity balls, and a formal ceremony in which a U.S. Postal Service official received the Royal Mail. *See, e.g., Today* (NBC television broadcast, Apr. 22, 2004); Tom Stieghorst, et al., *A Queen of Our Own: Cheering Crowds, Streams of Confetti, and Powerful Horn Blasts Greet the* Queen Mary 2, SUN-SENTINEL (Fort Lauderdale, Fla.), Jan. 27, 2004, at 1A.

Just last month, Colin Veitch, CEO of Respondent Norwegian Cruise Line, appeared on Good Morning America to award complimentary ten-day cruises to 125 couples who had just renewed their wedding vows live on national television.[4] *Good Morning America* (ABC television broadcast, Nov. 18, 2004). According to Veitch, "[w]e know there's no better vacation and romantic experience than a cruise with the one you love." Press Release, Norwegian Cruise Line, Norwegian Cruise Line Gives Away 125 Surprise 'Second Honeymoons' at Reaffirmation Ceremony on Good Morning America (Nov. 18, 2004). Statistics would appear to lend some credence to Veitch's claim; a recent study sponsored by the cruise industry found that almost 69 million Americans have indicated a desire to take a cruise. *See* International Council of Cruise Lines ("ICCL"), *Cruise Industry FAQs*, *available at* http://www.iccl.org/faq/cruising.cfm (last visited Nov. 29, 2004) (describing a cruise as "everyone's dream vacation").

The continued public appeal of cruise ships has fueled unparalleled growth in the industry. Tens of millions of peo-

[4] The press release issued by Respondent stated that these second honeymoons were aboard Respondent's ship *Norwegian Dawn* "which is homeported in New York City year round." The *Dawn*, however, flies the flag of the Bahamas.

ple have taken a cruise in the past two decades, *id.*, and despite a general economic downturn in the rest of the tourist industry post–9-11, the cruise industry has "continued its record growth," it has "maintain[ed] its historically high occupancy rate," and it "continue[s] to expand its contribution to economic activity in the United States." ICCL, *The Cruise Industry: 2002 Economic Summary*, *available at* http://www.iccl.org/resources/2002EconomicStudySummary.pdf (last visited Nov. 29, 2004). Cruise vacations consistently rank highest in satisfaction ratings among travel options. ICCL, *Cruise Industry FAQs*, *supra*. It is not difficult to locate the source of the cruise industry's popular success. Besides occupying a unique place in our collective consciousness, "a cruise offers all the things most people want in a vacation — romance, excitement, relaxation, adventure, escape, discovery, luxury, value and more." *Id.*

It is practically stating the obvious to note that "full participation" in society includes the ability to enjoy these celebrated aspects of human existence. Philosophers have observed for centuries that "being able to laugh, to play, to enjoy recreational activities" are central to the attainment of a fully-lived life. Martha C. Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 POL. THEORY 202, 222 (1992).[5] As noted above, Congress recognized just how important these activities are when it included leisure-focused entities such as health spas, museums, and amusement parks in the list of public accommodations covered by Title III of the ADA. *See* 42 U.S.C. § 12181(7). As the Eleventh Circuit observed in *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000), cruise ships are essentially floating public leisure and recreation centers. "Cruise ships, in fact, often contain places of lodging, restau-

[5] *Quoted in* Ann Hubbard, *Meaningful Lives and Major Life Activities*, 55 ALA. L. REV. 997, 1015 (2004).

rants, bars, theaters, auditoriums, retail stores, gift ships [sic], gymnasiums, and health spas." *Id.* at 1241.

The Fifth Circuit did not suggest otherwise in its holding below. *See Spector v. Norwegian Cruise Line Ltd.*, 356 F.3d 641, 644 (5th Cir. 2004) (noting that Respondent did not dispute district court's finding that cruise ships are "public accommodations" under Title III). But to follow the Fifth Circuit's lead and exempt a cruise ship from the requirements of Title III simply because the operator has chosen to fly a foreign flag of convenience rather than an American flag, would seriously undermine Congress' goal of full participation by people with disabilities in all aspects of American life, especially in light of the remarkable position cruise ships occupy in American culture.[6] *Cf. PGA Tour, Inc. v. Martin*, 532 U.S. 661, 677 (2001) (explaining that Title III "should be construed liberally" to further congressionally mandated goals, and finding that a professional golf competition is therefore a "public accommodation" under the ADA).

[6] As Petitioners explain on page 13 of their Petition for a Writ of Certiorari, no cruise ships serving United States mainland ports fly the American flag. Nevertheless, the cruise line industry derives almost all of its revenues from commercial activity in the United States, and the industry's ships are built, furnished, and operated with the American passenger in mind. *See* ICCL, *The Cruise Industry: 2003 Economic Summary*, *available at* http://www.iccl.org/resources/2003_econstudy-analysis.pdf (last visited Nov. 29, 2004) (noting that "passenger embarkations at U.S. ports . . . accounted for 72 percent of the global embarkations" and that U.S. residents constituted 76 percent of all passengers worldwide).

II. THE CRUISE SHIP INDUSTRY'S COMPLIANCE WITH TITLE III IS FEASIBLE AND WOULD NOT BE UNDULY ONEROUS GIVEN THE APPEAL OF CRUISES TO PERSONS WITH DISABILITIES.

A. The Final Report of the Passenger Vessel Access Advisory Committee Provides Workable Standards for the Cruise Ship Industry's Compliance with Title III.

The ADA mandates that the Architectural and Transportation Barriers Compliance Board ("Access Board") play an active role in making sure that public accommodations are "accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities." 42 U.S.C. § 12204. In furtherance of this mandate, the Access Board is required to issue minimum guidelines and requirements for accessibility, which federal agencies are then required to incorporate into any final enforcement regulations issued pursuant to section 306 of the ADA. *See* 42 U.S.C. § 12186(c).

In August 1998, the Access Board created the Passenger Vessel Access Advisory Committee ("PVAAC") to provide recommendations for a proposed rule addressing accessibility guidelines for newly constructed and altered passenger vessels and cruise ships covered by the ADA. The PVAAC was composed of twenty-one members representing various groups, including owners and operators of passenger vessels and cruise lines, designers of passenger vessels, and organizations representing individuals with disabilities.[7] For

[7] The Committee's membership included American Classic Voyages, American Council of the Blind, American Sail Training Association, American Society of Travel Agents, BB Riverboats, Boston Commission for Persons with Disabilities, Chesapeake Region Accessible Boating, International Council of Cruise Lines, National Tour Association, Paralyzed Veterans of America, Pas-

example, the International Council of Cruise Lines (of which Respondent Norwegian Cruise Line is a member) served on the Committee, as did *amici* Paralyzed Veterans of America and American Council of the Blind. The PVAAC explored ways in which to achieve access in light of competing considerations, and it made recommendations (in the form of a Final Report) for the Access Board to use in developing guidelines. *See* Summary of the Report from the Passenger Vessel Access Advisory Committee, *available at* http://www.access-board.gov/pvaac/commrept/report-summary.htm (last visited Nov. 29, 2004).

Amici PVA and ACB representatives were active members of the PVAAC and worked collaboratively with other Committee members (including industry representatives) to provide recommendations to the Access Board regarding how newly constructed and altered passenger vessels would comply with the ADA. The PVAAC submitted its Final Report to the Board in December 2000.[8] In developing the Final Report, the PVAAC applied the existing ADA Accessibility Guidelines for Buildings and Facilities to passenger vessels and then modified certain "building" provisions which the Committee determined would be problematic if ap-

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senger Vessel Association, Port of San Francisco, Princess Cruises, Rhode Island Tourism Division, Self Help for Hard of Hearing People, Society for the Advancement of Travel for the Handicapped, Society of Naval Architects and Marine Engineers, Southeast Alaska Independent Living, Southwest Disability and Business Technical Assistance Center, Transportation Institute, and the Washington State Department of Transportation. *See* Passenger Vessel Access Advisory Committee Members, *available at* http://www.access-board.gov/pvaac/CommList.htm (last visited Nov. 29, 2004).

[8] The Final Report is available online at http://www.access-board.gov/pvaac/commrept/index.htm (last visited Nov. 29, 2004).

plied to seagoing vessels.[9] Vessel owners and operators understood that the applicability of the ADA would require at least some degree of accessibility aboard passenger vessels, as well as embarking and disembarking.[10]

Several cruise lines have already implemented many of the recommendations of the PVAAC. For example, Royal Caribbean states that every ship in its fleet has staterooms that are specially designed to be wheelchair accessible, and the company has undertaken a multimillion dollar renovation pro-

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[9] The PVAAC relied primarily on the original ADA Accessibility Guidelines for Buildings and Facilities ("ADAAG") that the Board issued in 1991. *See* 56 Fed. Reg. 35408 (July 26, 1991). The PVAAC also considered the "Recommendations for a New ADAAG" published on September 30, 1996, by another Access Board advisory committee. *See* ADAAG Review Advisory Committee's Recommendations, *available at* http://www.access-board.gov/ada-aba/commrept.htm (last visited Nov. 29, 2004). The Access Board eventually issued a revised version of its Accessibility Guidelines for Buildings and Facilities in July 2004. *See* Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines, 69 Fed. Reg. 44084 (July 23, 2004).

[10] While the PVAAC issued its Final Report to the Access Board almost four years ago, the Access Board only recently released its draft guidelines based on the Report. *See* Americans with Disabilities Act Accessibility Guidelines for Passenger Vessels; Large Vessels, 69 Fed. Reg. 69244 (Nov. 26, 2004); *see also* Board Releases Information for Guidelines for Passenger Vessels (Nov. 26, 2004), *available at* http://www.access-board.gov/news/pvag.htm (last visited Nov. 29, 2004). The draft guidelines reflect most of the recommendations contained in the PVAAC's Final Report. As explained above, however, the PVAAC relied on the 1991 version of the ADAAG in preparing its Final Report, and the Access Board has since issued a revised ADAAG. *See supra* note 9. As a result, the new draft guidelines borrow several standards from the revised ADAAG, rather than from the PVAAC's recommendations.

ject to make its fleet more accessible.[11] Accommodations on Royal Caribbean ships include extra-wide corridors, hydraulic pool and Jacuzzi lifts, and ramps in terraced public areas; Braille on menus, stateroom doors, service directories and elevator buttons; portable kits for people who are deaf or hard of hearing, including TTY (Text Telephone)/TDD (Telecommunication Device for the Deaf), personal notification systems, and strobe alarms; and closed-captioned televisions, amplified telephones in staterooms and public areas, and infrared audio receiver systems.[12] Other cruise lines have implemented similar accessibility measures. Indeed, Princess Cruise Lines highlights its involvement with PVAAC and the Access Board in its "Policy Statement on Accessibility for Passengers with Disabilities."[13] When Carnival Corporation decided in 2001 to settle a class-action lawsuit brought to make Carnival's cruise ships ADA compliant, the parties incorporated into their settlement agreement accessibility standards from the PVAAC's Final Report.[14]

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[11] Royal Caribbean International, Accessibility Onboard, *available at* http://www.royalcaribbean.com/allaboutcruising/accessibleseas/home.do (last visited Nov. 29, 2004). The website also provides specific information regarding accessibility for individuals with visual, hearing, and other mobility impairments.

[12] Press Release, Society for Accessible Travel and Hospitality, Royal Caribbean International Supports SATH (July 27, 2004), *available at* http://www.sath.org/index.html?section=Press Releases&id=4259 (last visited Nov. 29, 2004).

[13] *See* Princess Cruise Lines, Accessibility for Passengers with Disabilities, *available at* http://www.princess.com/about/policy.jsp?policyId=na405 (last visited Nov. 29, 2004). The website also discusses future fleet renovations designed to further expand accessibility.

[14] *See Access Now, Inc. v. Cunard Line Ltd.*, No. 00-7233-Civ (S.D. Fla. Apr. 18, 2001) (Ex. 1 to Notice of Conditional Class Certification, Proposed Settlement, and Fairness Hearing).

Thus, as the foregoing demonstrates, the Final Report of the PVAAC provides a sound basis for workable and appropriate accessibility standards for the cruise ship industry. Any concerns about the feasibility of compliance are therefore misplaced and certainly do not justify exempting the industry from the public accommodations provisions of the ADA.

B. An Accessible Cruise Is an Ideal Vacation Option for Persons with Disabilities, and Many Cruise Lines Actively Market to Persons with Disabilities.

In 2003, the Travel Industry Association of America, the Open Door Organization, and the Society for Accessible Travel and Hospitality released the results of a Harris Interactive Survey that examined the vacation habits of people with disabilities. The Survey found that 12 percent of the population with disabilities had taken a vacation cruise in the preceding five years, compared to 8 percent of the population at large.[15] The Harris Survey also found that people with disabilities spend over $13 billion each year on vacations, and that this market will only expand in the future.[16] According to the Travel Industry Association, because of aging baby-boomers, persons with disabilities will make up to 24 percent of the U.S. population by the year 2030.[17]

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[15] *See* Deborah Alexander, *Vacationing with Disabilities: New Travel Market Is Opening Up on the Road*, OMAHA WORLD-HERALD, May 23, 2003, at 1D; *see also A League of Their Own*, EXCEPTIONAL PARENT, Vol. 34, No. 5, May 1, 2004, at 42.

[16] *See* Alexander, *supra* note 15.

[17] *See* Tricia Holly, *Able Bodies, Open Minds: Learning to Serve the Disabled Travel Market Is Daunting but Well Worth the Effort of Travel Agents*, TRAVEL AGENT, Vol. 311, No. 2, Jan. 13, 2003, at 20.

For many people with disabilities, an accessible cruise is an ideal vacation option because cruise ships offer, in a relatively small space, an incredible array of leisure activities. Cruise ships frequently contain restaurants, bars, movie theaters, shopping outlets, casinos, sunbathing decks, swimming pools, live music and theater, educational programs, health spas, and gymnasiums. Thus, a traveler with a disability, who may have limited mobility, need not leave the ship to enjoy a host of entertainment options. The cruiser with disabilities also has access to reliable, onboard medical services, a fact particularly comforting when traveling to foreign locales.[18] The traveler need only unpack once over the course of her vacation, and if she requires rest in the middle of the day, she can simply retire to her cabin.[19] Furthermore, the consistent availability of ship staff ready to provide assistance when

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[18] While not required to do so by the ADA, most cruise lines provide quality medical services on board. *See, e.g.*, Princess Cruise Lines, Shipboard Medical Program, *available at* http://www.princess.com/about/policy.jsp?policyId=na397 (last visited Nov. 29, 2004); Crystal Cruises, Shipboard Life: Medical Services, *available at* http://www.crystalcruises.com/onboard.aspx?ID=9#id36 (last visited Nov. 29, 2004). The cruise lines typically require each onboard physician to have an American medical license, or its equivalent, and not a license from the country whose flag the ship flies. *See, e.g.*, Carnival Cruise Lines, Is There a Doctor on Board?, *available at* http://www.carnival.com/CMS/FAQs/Medical_Services.aspx (last visited Nov. 29, 2004) ("Doctors on our ships are required to have a current and valid medical license from the USA, one of its territories, or Canada, Australia, New Zealand or South Africa, or have full registration with the British General Medical Counsel of the United Kingdom or current full registration with the British General Medical Council of the United Kingdom, or current full registration with the medical council of a member country of the European Union.").

[19] *See* Karin Esterhammer, *Sailing on Four Wheels: A Short Voyage to Mexico Proves to Be Easy Going for a Wheelchair-Bound Vacationer*, L.A. TIMES, Feb. 6, 2000, at L5.

necessary affords someone with a disability a high level of comfort and security while traveling.[20] It is therefore hardly surprising that persons with disabilities are fifty percent more likely to have taken a cruise in the past five years than the population at large.[21]

Cruise lines have recognized the appeal that cruises have for people with disabilities, and the industry has actively exploited their market potential. Carnival Cruise Lines has produced a brochure for people with disabilities entitled "Easy Access to Fun" specifically aimed at the traveler with a disability, and the cruise line has experienced remarkable growth in that segment of the market.[22] When the Royal Caribbean cruise line launched its newest ship *Mariner of the Seas* in 2003, the company chose Jean Driscoll, an Olympic wheelchair champion and advocate for people with disabilities, to be the ship's "godmother" in order to highlight the ship's accessibility. At the *Mariner*'s official launch, Driscoll christened the ship, pushing a remote-control button to release a bottle of champagne against the hull.[23]

Despite these public gestures, and despite the market potential presented by persons with disabilities, some cruise lines, such as Respondent Norwegian Cruise Line, have failed to make their ships fully accessible, as the instant litigation attests.[24] However, given that many cruise lines have recog-

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[20] *See* Dian McDougall, *Ships Meet Special Needs*, TORONTO SUN, Dec. 1, 2002, at T3.

[21] *See* Alexander, *supra* note 15.

[22] *See* Holly, *supra* note 17 (noting that "the number of disabled passengers shot up 36 percent between 2000 and 2001" and "predict[ing] an even larger increase in 2002").

[23] Victoria Stevens, *Royal Treatment: Royal Caribbean Line Launches Its Newest Luxury Ship, the Mariner of the Seas*, TORONTO STAR, Nov. 27, 2003, at H01.

[24] Complaints regarding accessibility concern physical barriers as well as a lack of preparedness of the crew and misleading prom-

nized the benefits of reaching out to persons with disabilities, demanding industry-wide compliance with Title III of the ADA cannot be considered unduly onerous. Therefore, since the PVAAC has determined that it is feasible for cruise ships to become reasonably accessible to persons with disabilities, and since people with disabilities constitute a lucrative market segment, there is no reason to exempt cruise ships from the public accommodations provisions of the ADA.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Fifth Circuit.

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ises made by travel agents. *See* Lee Romney, *Cruise Lines, Disabled Spar Over Accessibility*, L.A. TIMES, Sept. 28, 2004, at B1; *see also* Curtis D. Edmonds, *Won't You Let Me Take You on a Sea Cruise: The Americans With Disabilities Act and Cruise Ships*, 28 TUL. MAR. L.J. 271 (2004) (summarizing cases).